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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 26, 2001

JOINT PETITION OF

CAVALIER TELEPHONE L.L.C.,  
NETWORK ACCESS SOLUTIONS, LLC,  
COVAD COMMUNICATIONS COMPANY,  
and  
AT&T COMMUNICATIONS OF VIRGINIA, INC.

CASE NO. PUC010096

For Structural Separation of Verizon  
Virginia Inc. and Verizon South Inc.

ORDER GRANTING MOTION TO DISMISS

On April 9, 2001, Cavalier Telephone, L.L.C., Network Access Solutions, LLC, Covad Communications Company, and AT&T Communications of Virginia, Inc. (hereinafter "Petitioners"), filed with the State Corporation Commission ("Commission") a Joint Petition ("Joint Petition") for Structural Separation of Verizon Virginia Inc. ("Verizon Virginia") and Verizon South Inc. ("Verizon South"). Petitioners request the Commission to institute a proceeding to order the structural separation of Verizon Virginia and Verizon South so that each company is separated into two distinct wholesale and retail corporate subsidiaries.

The Competitive Telecommunications Association ("CompTel") was granted leave to participate in this proceeding by Order issued April 26, 2001.

On April 27, 2001, Verizon Virginia and Verizon South (collectively "Verizon") filed a Motion to Dismiss and Answer to Petition, pursuant to the Order for Response issued April 12, 2001.

On May 2, 2001, the Association of Communications Enterprises ("ASCENT") filed a Motion for Leave to Intervene. The Commission now grants ASCENT's Motion.<sup>1</sup>

The Petitioners and CompTel filed a Joint Reply to Verizon's Motion to Dismiss and Answer to Petition on May 4, 2001, pursuant to the Order for Response.

On May 23, 2001, Verizon filed its Motion for Leave to File Response to Joint Reply of Petitioners and attached Response. Verizon, as the movant on the Motion to Dismiss, should be granted leave to respond; and the Response filed on May 23, 2001, is accepted into the pleadings.

Joint Petitioners propose structural separation of Verizon as a tool for opening Virginia's local exchange markets to greater competition.<sup>2</sup> By ordering the structural separation of Verizon into distinct wholesale and retail units, Verizon's ability to use its network facilities to favor Verizon's own

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<sup>1</sup> ASCENT indicated its intention to monitor this proceeding and to submit a brief or comments, as appropriate. By today's Order Granting Motion to Dismiss, no further filings will be called for.

<sup>2</sup> Joint Petition at 4-5.

retail operations and stifle competition will be constrained, according to the Joint Petition.<sup>3</sup>

Joint Petitioners direct us to Article IX of the Virginia Constitution and several statutes of the Code of Virginia for the requisite authority to order structural separation of Verizon. Joint Petitioners urge us to find that these authorities grant the Commission broad powers to regulate incumbent LECs, promote competition, and protect Virginia consumers and, therefore, are clear grants of jurisdiction to order structural separation.<sup>4</sup>

Based on the pleadings of record and the applicable law, the Commission finds that Verizon's Motion to Dismiss should be granted for the following reasons. First, Joint Petitioners cite restructuring in the electric utility industry including the Virginia Electric Utility Restructuring Act ("Restructuring Act")<sup>5</sup> as support for our inherent authority to order the requested restructuring.<sup>6</sup> The Restructuring Act, of course, does not apply to Verizon or other telecommunications utilities. Moreover, the Restructuring Act does not support Joint

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<sup>3</sup> Joint Petition at 4.

<sup>4</sup> Joint Reply of Petitioners at 8 et seq.

<sup>5</sup> Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia.

<sup>6</sup> Joint Petition at 24-25 and Joint Reply at 11.

Petitioners' contention that we have broad inherent authority to order the requested structural separation.<sup>7</sup>

Second, full structural separation would impair Verizon's property rights under its existing certificates of public convenience and necessity. Joint Petitioners contend that even if structural separation did affect Verizon's certificates, the Commission may nevertheless revoke, amend, or transfer a certificate if the certificate holder "has willfully violated or refused to observe the laws of this State touching such certificate," or "any of the Commission's proper orders, rules or regulations."<sup>8</sup> Based on the pleadings of Joint Petitioners, we will not invoke the revocation sanctions provided in § 56-265.6 of the Code of Virginia.

Third, Joint Petitioners urge that we may order structural separation, pursuant to § 56-35 of the Code of Virginia, to regulate Verizon's performance of its public duties and to correct abuses therein. Again, based upon the pleadings of Joint Petitioners, we do not conclude that this statute should be invoked to grant relief in this proceeding.

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<sup>7</sup> Indeed, the fact that the General Assembly passed specific legislative authority dealing with the kind of restructuring envisioned by Joint Petitioners (albeit for electric utilities) could be argued, as Verizon did, to support the proposition that, absent such enabling legislation, the Commission would not be able to order structural separation in telecommunications.

<sup>8</sup> Va. Code § 56-265.6.

Fourth, the Commission finds no grant of authority under the federal Telecommunications Act of 1996<sup>9</sup> to order structural separation of Verizon.

Finally, Joint Petitioners invite us to "use the Joint Petition as an opportunity to investigate why there is so little local competition in Virginia and what can be done to improve the situation."<sup>10</sup> The Commission has several pending dockets addressing competition in the local exchange market.<sup>11</sup> Rather than launch a separate investigation in this case, the Commission concludes that it is more expedient and appropriate at this time to pursue the pending cases.

Accordingly, IT IS ORDERED THAT:

(1) The Motion for Leave to Intervene by ASCENT is hereby granted.

(2) The Motion to Dismiss is hereby granted.

(3) There being nothing further to come before the Commission, this case is closed.

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<sup>9</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>10</sup> Joint Reply at 3.

<sup>11</sup> A collaborative committee is investigating market opening measures and will make its report in Case No. PUC000026. Third-party testing of Verizon Virginia's Operation Support Systems ("OSS") is underway, and the results will be reported to the Commission in Case No. PUC000035. The Commission also continues to monitor premature disconnects through quarterly reports as ordered in Case No. PUC000262, Order Granting Injunction issued January 29, 2001.